

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:20-cv-361-GCM**

JOHN ALAN FAGAN, JR.,

Plaintiff,

vs.

**ANDREW SAUL,
Commissioner of Social Security,**

Defendant.

ORDER

THIS MATTER is before the Court on *pro se* Plaintiff's Complaint, (Doc. No. 1), and Application to Proceed in District Court Without Prepaying Fees or Costs, (Doc. No. 2).

In this matter, Plaintiff is seeking review of an adverse final determination of the Social Security Commission. See (Doc. No. 1). Plaintiff has filed an Application to proceed *in forma pauperis* which is pending before the Court. (Doc. No. 2).

Proper venue under the Social Security Act is "in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business...." 42 U.S.C. § 405(g). When a plaintiff files a case laying venue in the wrong division or district, the district "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). Transfer for lack of venue can be considered *sua sponte*. See Feller v. Brock, 802 F.2d 722, 729 n.7 (4th Cir. 1986).

Plaintiff resides in Rowan County, which is in the Middle District of North Carolina, and it appears that venue does not lie in this District. Because it appears that this action should have been brought in the Middle District of North Carolina where the Plaintiff resides, this action will be transferred to the Middle District pursuant to 28 U.S.C. § 1406(a). Plaintiff may file a Notice

objecting to the transfer within fourteen (14) days of this Order. See Feller, 802 F.2d at 729 n.7 (requiring notice when venue is raised *sua sponte*). The failure to object will result in this case's transfer to the Middle District of North Carolina without further notice.

IT IS, THEREFORE, ORDERED that Plaintiff may file a Notice within **fourteen (14) days** of this order objecting to the transfer of this action to the Middle District of North Carolina. If no Response is filed, this action will be transferred to the Middle District without further notice.

Signed: July 15, 2020

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

